

REMARKS

This Amendment is being filed in response to the Final Office Action mailed June 30, 2008, which has been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the remarks to follow are respectfully requested.

Claims 1-15 remain in this application, where claims 1, 5 and 15 are independent.

In the Final Office Action, the Examiner suggested adding headings to the specification. Applicants gratefully acknowledge the Examiner's suggestion, however respectfully decline to add the headings as they are not required in accordance with MPEP §608.01(a), and could be inappropriately used in interpreting the specification.

Section headings are not statutorily required for filing a non-provisional patent application under 35 USC 111(a), but per 37 CFR 1.77 are only guidelines that are suggested for applicant's use. (See Miscellaneous Changes in Patent Practice, Response to comments 17 and 18 (Official Gazette, August 13, 1996) [Docket No:

950620162-6014-02] RIN 0651-AA75 ("Section 1.77 is permissive rather than mandatory. ... [T]he Office will not require any application to comply with the format set forth in 1.77").

It is respectfully submitted that "should" as recited in MPEP §608.01(a) is suggestive or permissive, and not mandatory as in "must" or "shall". For example, 37 CFR 1.77(b) recites:

The specification should include the following sections in order: (Emphasis added)

Similarly, 37 CFR 1.77(c) recites:

The text of the specification sections defined in paragraphs (b)(1) through (b)(12) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type. (Emphasis added)

By contrast, 37 CFR 1.77(b)(5) recites:

(5) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on a compact disc and an incorporation-by-reference of the material on the compact disc (see § 1.52(e)(5)). The total number of compact discs including duplicates and the files on each compact disc shall be specified. (Emphasis added)

Thus, it is respectfully submitted that a distinction is made between "should" and "shall", where "should" is permissive, and "shall" is mandatory. Accordingly, it is respectfully submitted

that headings are not required in accordance with MPEP §608.01(a).

In the Final Office Action, claims 1-2, 5-6 and 13-15 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 6,201,476 (Depeursinge). Further, claims 1-2, 5-6 and 10 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over EP 1,256,316 (Damen) in view of an article entitled "A triaxial Accelerometer and Portable Data Processing Unit for the Assessment of Daily Physical Activity" (Bouten). Claims 4 and 12 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Damen in view of Bouten and U.S. Patent No. 6,639,537 (Raz). Claims 3 and 11 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Damen in view of Bouten and U.S. Patent No. 5,983,722 (Berther). Claims 7-9 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Damen in view of Bouten and U.S. Patent No. 5,976,083 (Richardson). Claims 4 and 12 are Depeursinge in view of U.S. Patent Application Publication No. 2002/0082079 (Mantyjarvi). It is respectfully submitted that claims 1-15 are patentable over Depeursinge, Damen, Bouten, Raz, Berther, Richardson and Mantyjarvi for at least the following reasons.

Depeursinge is directed to a device for monitoring the activity of a person. As shown in FIG 1, the Depeursinge monitoring device 1 comprises three accelerometers 2a, 2b and 2c which are connected to summing device 24 through two integrators 3 and 4. It is alleged that the junction above the analog to digital (A/D) converter 5 is an adder.

It is respectfully submitted that this junction is not an adder, since Depeursinge specifically describes from column 2, line 57 to column 3, line 30, and shows in FIG 3 two sets of elements for two different signals associated with the x and z axes, such as two a low pass filter 7 C, 7D, and two computation circuits 7A, 7B having two difference circuits 7a, two comparator 7b and two First-In-Last-Out (FILO) registers. Thus, the A/D converter 5 does not receive or output a single signal but TWO signals, one for each "x and z axes." (See column 2, line 57, and column 3, lines 25-28).

Damen is directed to a portable device including three accelerometers for calculating an activity parameter. As shown in FIG 3, the three accelerometers 14 are connected to an A/D converter 16 through an amplifier 15.

In stark contrast, the present invention as recited in

independent claim 1, and similarly recited in independent claims 5 and 15, amongst other patentable elements recites that (illustrative emphasis provided):

the device comprising a sensor system including at least two accelerometers with which acceleration in the mutually perpendicular directions is convertible into electric signals while the value is determinable by signal processing means from an electric signal formed from the electric signals, wherein prior to the signal processing means electric signals from the at least two accelerometers are addable together by an adding element to form the electric signal, wherein outputs of the at least two accelerometers are directly connected to the adding element to form the electric signal for processing by the signal processing means.

These features are nowhere disclosed or suggested in Depeursinge, Damen, and combination thereof. Rather, Depeursinge shows processing TWO signals associated with the x and z axes, and does not disclose or suggest that "prior to the signal processing means electric signals from the at least two accelerometers are addable together by an adding element to form the electric signal," as recited in independent claim 1, and similarly recited in independent claims 5 and 15. The only adder in Depeursinge is element 24 shown in FIG 1, where outputs of the accelerometers are NOT directly connected to this adder 24. Further, assuming

arguendo that the A/D converter 16 shown in FIG 3 of Damen is an adder, the three accelerometers 14 are NOT directly connected to the A/D converter 16, but are connected through an amplifier 15.

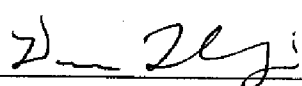
In addition, there is no disclosure or suggestion in Depeursinge and Damen, alone or in combination, of "an adder [which is] directly connected to the at least two accelerometers for directly receiving the output currents and forming a total current," for processing by a processor, as recited in independent claim 15 and dependent claims 13-14. (Illustrative emphasis provided) Any adders in Depeursinge and Damen do not form a total current for processing by a processor, as recited in claims 13-15. Bouten, Raz, Berther, Richardson and Mantyjarvi are cited to allegedly show other features and do not remedy the deficiencies in Depeursinge and Damen.

Accordingly, it is respectfully submitted that independent claims 1, 5 and 15 should be allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-4, 6-8, 11-12 and 13-15 should also be allowed at least based on their dependence from amended independent claims 1 and 5.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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